

November 26, 2018

Via email to: R5FOIA@epa.gov

Attn: Region 5 FOIA Office

Re: FOIA Request for Records concerning Watco Terminal and Port Services air monitoring pursuant to Section 114(a) of the Clean Air Act

Dear FOIA Officer:

I write on behalf of the Environmental Advocacy Clinic at Northwestern Pritzker School of Law to request disclosure of records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and applicable Environmental Protection Agency (“EPA” or “Agency”) regulations at 40 C.F.R. § 2.100-2.406.

I. Requested Records and Disclosure Method

Please produce (a) all air quality monitoring data and (b) all meteorological data submitted by Watco Terminal and Port Services, 2926 E. 126th Place, Chicago, Illinois 60633, in response to EPA Region 5’s request to provide information under Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a), dated May 15, 2018 (“Section 114 Request”).¹

Please either email responsive records to me at debbie.m.chizewer@law.northwestern.edu, or email me to request a link to a Dropbox folder where you can upload the records. Please release responsive records to me on a rolling basis prioritizing records falling into category (a) above regarding emissions testing and data. If you determine that any of the records I’ve described above are already publicly available, please let me know where to find them.

II. Request for a Fee Waiver (or Reduction)

The Environmental Advocacy Clinic requests that EPA waive any fee it would otherwise charge for searching for and producing the requested records; FOIA dictates that the requested records be

¹ See In the Matter of Watco Terminal and Port Services, Request to Provide Information Pursuant to the Clean Air Act, May 15, 2018, available at <https://www.epa.gov/sites/production/files/2018-05/documents/114-request-watco-terminal-and-port-services-20180515-13pp.pdf>.

provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). The Environmental Advocacy Clinic meets the requirements for a fee waiver. *See* 40 C.F.R. § 2.107(l)(2).

A. Subject of the request

The records requested here pertain to EPA’s investigation into whether an emission source is complying with the relevant State Implementation Plan provisions and the Clean Air Act. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

A full fee waiver is requested under 5 U.S.C. § 552(a)(4)(A)(iii) (granting a fee waiver where “disclosure of the information is in the public interest because [the information] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester”).

The requested records concern “the operations or activities of the government.” 40 C.F.R. 2.107(l)(2)(i). USEPA has the responsibility to take action in conjunction with its counterpart state agencies under a broad range of statutes, including, the Clean Air Act, 42 U.S.C. § 7401 et seq. The requested records provide information related to the activities of USEPA in its efforts to study the manganese and other metals emissions in the Southeast Side of Chicago.

B. Informative value of the records to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities.” 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the government’s role in addressing public health, environmental, or other concerns related to the operations at the bulk material handling facility that is the subject of this request. There is more than a reasonable likelihood that these records have informative value to the public because residents of the community in which the facility is located have long been concerned about the potential health impacts of the activities at this facility, and the public at large has an interest in understanding the impacts of this and similar operations on air, soil, and water quality. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

The requested records are “likely to contribute” to public understanding of the activities described above. 40 C.F.R. 2.107(I)(2)(ii). Residents who live, work and play near contaminated and potentially contaminated areas will benefit from an understanding of the actions taken by USEPA to alleviate present and potential risks to their community. Specifically, the Environmental Advocacy Clinic represents a community group, the Southeast Side Coalition to Ban Petcoke, a group of affected residents who live in the area of Chicago, Illinois impacted by the activities describe above. The Southeast Side Coalition to Ban Petcoke is regularly in conversation with the broader community and will work with the Environmental Advocacy Clinic and other partners to use these materials to increase public understanding of the activities described above.

The Environmental Advocacy Clinic at the Northwestern University Pritzker School of Law is a public interest organization, which advocates on behalf of the public on environmental matters. The Northwestern University Pritzker School of Law is not-for-profit, educational organizations in good standing with the Secretary of State of Illinois. The records are not requested in furtherance of any commercial interest. 40 C.F.R. 2.107(I)(3)(i).

If a fee waiver is not granted, please contact me at 312-503-4253 or Debbie.m.chizewer@law.northwestern.edu with an estimate of expenses and hold for approval before proceeding. If the fees are less than \$100, it is possible that to expedite disclosure, the Environmental Advocacy Clinic will, if needed and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 CFR §2.107(c)(1)(iii). If access to the requested records is denied, please provide a detailed explanation of the reason for denial.

C. Significance of the contribution to public understanding

The records requested here shed light on a matter of considerable public interest and concern: Operations at bulk material handling facilities emit particulate matter consisting of harmful metals – including manganese, a potent neurotoxin – and communities in Chicago and similar communities across the country are concerned about the type and extent of exposure that they endure as a result of these operations. In Chicago, EPA has taken action against the S.H. Bell facility, which has operations similar to the facility at issue in this request, after air monitoring identified problems with metals from the facility.²

² See U.S. EPA, EPA in Illinois, S.H. Bell Chicago Facility, available at <https://www.epa.gov/il/sh-bell-chicago-facility>.

While the public was quickly granted access to S.H. Bell's air monitoring data via an EPA website, to our knowledge the monitoring data for the facility located at 2926 E. 126th Place remains unavailable.³ Public understanding of air impacts relating to bulk material handling would be significantly enhanced by disclosure of the requested records concerning air monitoring at or near this facility. Disclosure would help the public to more effectively evaluate the potential harm of the facility's operations and others like it on the communities in which they are located, and to better understand and evaluate EPA's actions in ensuring that such facilities comply with state and federal air pollution requirements.

Thank you for your assistance. Please call or email me with any questions.

Sincerely,



Debbie M. Chizewer
Montgomery Foundation Environmental Law Fellow
Environmental Advocacy Clinic
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, IL 60611
Debbie.m.chizewer@law.northwestern.edu
312-503-4253

³ Compare U.S. EPA, EPA in Illinois, S.H. Bell Chicago Air Monitoring Data, available at <https://www.epa.gov/il/sh-bell-chicago-air-monitoring-data> and EPA in Illinois, Watco Terminal and Port Services Documents, available at <https://www.epa.gov/il/watco-terminal-and-port-services-documents>.